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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 TERRY L. CROSS,

12 Petitioner,

13 v.

14 JEFFERY UTTECHT,

15 Respondent.

CASE NO. C11-5469 RJB

ORDER ADOPTING REPORT AND  
RECOMMENDATION, DENYING  
PETITION FOR WRIT OF HABEAS  
CORPUS, AND DENYING A  
CERTIFICATE OF  
APPEALABILITY

16 This matter comes before the court on the Report and Recommendation of the Magistrate  
17 Judge. Dkt. 21. The court has reviewed the relevant documents and the remainder of the file  
18 herein.

19 In this petition for writ of habeas corpus, petitioner presented two claims for relief. Dkt.  
20 1. On November 16, 2011, the court dismissed petitioner's unexhausted claim, following his  
21 motion to dismiss that claim. See Dkt. 20.

22 On February 29, 2012, U.S. Magistrate Judge J. Richard Creatura issued a Report and  
23 Recommendation, recommending that the court deny petitioner's exhausted claim, which was

24 ORDER ADOPTING REPORT AND  
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1 that his counsel was ineffective for not having petitioner evaluated for competency. Dkt. 21.  
2 The court concurs with the analysis of the magistrate judge. The state court decisions denying  
3 relief on this claim did not result in a decision that was contrary to, or involve an unreasonable  
4 application of, clearly established federal law, as determined by the Supreme Court; nor did the  
5 state court's adjudication result in a decision that was based on an unreasonable determination of  
6 the facts in light of the evidence presented to the state courts. See 28 U.S.C. § 2254(d). The  
7 petition for writ of habeas corpus should be denied.

8 The court concurs with the magistrate judge that petitioner is not entitled to a Certificate  
9 of Appealability. A Certificate of Appealability should be denied.

10 Accordingly, it is hereby **ORDERED** that Report and Recommendation of the Magistrate  
11 Judge (Dkt. 21) is **ADOPTED**. The petition for writ of habeas corpus is **DENIED**. A Certificate  
12 of Appealability is **DENIED**.

13 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
14 to any party appearing *pro se* at said party's last known address.

15 Dated this 27th day of March, 2012.

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18 ROBERT J. BRYAN  
19 United States District Judge  
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